

In The Circuit Court Of Russell County, Alabama  
STATE OF ALABAMA

Roy D. Heath, §  
Petitioner, §  
§  
US. §  
§  
STATE OF ALABAMA §  
Respondents §

CASE NO. CC-01-30.63.3662

Motion Pursuant To Rule 32.9(d)

Comes now The Petitioner, "Roy David Heath"  
Pro-se, without The benefit of legal Representation  
In The Above Style "Reference Cause" Petitioner  
Petition For Relief pursuant To Rule 32.9(d) A.R.  
C.P. and In This Cause, would aver as follows:

"Petitioner's Contentions"

Petitioner contends, in his Post-Trial Motion pursuant  
To Rule 24, A.R.C.P. The Following:

(A) The State Breached The petitioner's Plea  
Agreement Entered 4/9/2001, When The Court did not  
allow Petitioner To withdraw his guilty Plea and return The  
Original Charges To The Docket.

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(B) THE STATE WAS WITHOUT Jurisdiction To Run Enhancements § 13A-12-256 AND § 13A-12-270 Concurrently with THE BASE Sentence.

(C) Attorney John Britton Rendered Ineffective Assistance of Counsel for failure To perfect Appeal

(D) Attorney Charles Floyd III rendered Ineffective Assistance of Counsel for failure To file, "Ineffective Assistance of Counsel on The Trial Attorney, John Britton when records is in Plain View THAT Court of Appeals Notified Trial Counsel, "John Britton" To send 2 Forms THAT goes with Notice of Appeal.

"For Good Cause shown why Petitioner  
As a matter of Law Is Entitled To Relief"

THE Petitioner did file a Post-Trial motion Pursuant To Rule 24, A.R.M.P. with THE Trial Court in THIS case, Raising THAT of The Above issues, among others, However THE Petitioner files A Supporting Affidavit in Support of His motion.

In Support of THE Relief Petitioner seeks before This Court He Presents THE Court Held In McCollum V. State, 678 So. 2d. 1270 (Ala. Crim. App. 1995), THE Appellant did file A motion For A New Trial with THE Trial Court in THIS case, Raising His issues among others, THE Trial Court denied THE motion, However; THE Appellant failed To file A Supporting Affidavit with this motion, This Court has repeatedly Held, "Assertions in

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An unverified motion ~~are~~ ~~are~~ allegations and cannot be considered as evidence or proof of the facts alleged." Blount v. State, 557 So.2d. 1333 (Ala. Crim. App. 1989) SEE ALSO Similton v. State, 672 So.2d. 1363 (Ala. Crim. App. 1995) MOREOVER, THIS Delay in raising an objection amounts to invited error. "Under the doctrine of invited error, a defendant cannot by his own voluntary conduct invite error and then seek to profit thereby" Phillips v. State, 527 So.2d. at 156 (Ala. 1998)

Petitioner argues and contends He's entitled To An Evidentiary Hearing pursuant To Rule 32.9(d) AND 32.9(c) AS A matter of law AND for whatever reason THis Honorable Court refuse To undermine THE Alabama judicial system and refuse To set this case down for a hearing pursuant To 32.9(d), pursuant To Ex parte Bootwright, 471 So.2d. 1257 (Ala. 1985) BASED ON THE pleadings contained in THE record it appears THAT EACH contention alleged by Petitioner needs To be addressed pursuant To 32.9(d)(c) SEE Certified Petition filed In THE Circuit Court of Russell County, EACH ground raised is ~~in~~ compliance with 32.3 "Burden of Proof, Affidavit Attached In Support of Relief Sought AS A matter of law.

Petitioner further ~~av~~ ~~av~~ before THis Court THAT when A Post-Trial motion is "meritorious"

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on its face was THE ONE before THIS COURT AND THIS COURT do not Address ANY of THE Petitioner's issues as Alleged in This his Petition filed July 14, 2003, "NOTE:

"THE COURT STATED IN BENEFIELD V. STATE, 586 SO. 2d. 1379 (ALA. Crim. App. 1991), Held THAT, "In A Written ORDER, THE Circuit Court Shall Address EACH AND EVERY Allegation raised by THE Petitioner AND Shall "Clearly AND Specifically STATE THE Courts Reasons for denying Relief as To each ground, IF Relief be denied.

Petitioner's Petition filed 7/14/2003 is simple, it's sufficiently pleaded, and is meritorious on its face, It contain a clear A specific statement of the grounds upon which relief is sought, including full disclosure of THE facts relied upon.

Petitioner further Avails out THE Court Held in Ex Parte Boatwright, Evidentiary hearing "must" be Held on Cocam Nobis Petition which is meritorious on its face i.e., one which contains matters AND allegations which if TRUE entitle Petitioner to Relief.

Petitioner argues THAT if THIS Court fail To make findings of Facts on a meritorious Claim Undisputed Factual Allegations "must" be Taken as TRUE, SEE Henderson V. STATE, 596 SO.2d 1009 (ALA. Crim. App. 1991).

For THE foregoing reasons, it is Respectfully  
Submitted THAT Petitioner's "Motion Pursuant  
To Rule 32.9(d)(c), A.R.C.P. Petition For  
Relief From Conviction or Sentence does state  
A claim upon which relief can be granted, and  
That, Therefore said Petition is due To be granted

Respectfully Submitted This 28<sup>th</sup>, day of  
July, 2003

Roy David Heath  
Pro-se Petitioner  
Roy David Heath  
Fountain 3800 4/132  
Atmore, Alabama

36503

"Certificate of Service"

I Roy David Heath, pro-se, hereby certify THAT  
I HAVE SERVED THE ABOVE foregoing "Motion  
Pursuant To Rule 32.9(d)(c), A.R.C.P. For Relief  
From Conviction or Sentence on THE Circuit Court  
Clerk, OF Russell County by Certified mail, by  
Placing same in The U.S. Mail, Postage Prepaid  
AND Properly Addressed, Done This 7/28/2003

Roy D. Heath

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